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No. 606

In the Supreme Court of the United States

OCTOBER TERM, 1952

A. B. MOTORS, INC., ET AL., *Petitioners*

VS.

JOSEPH FREEHILL, DIRECTOR OF PRICE STABILIZATION, *Respondent*

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES EMERGENCY COURT OF APPEALS AND SUPPORTING BRIEF

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A. B. MOTORS, INC., ET AL., *Petitioners*

vs.

JOSEPH FREEHILL, DIRECTOR OF PRICE STABILIZATION, *Respondent*

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES EMERGENCY COURT OF APPEALS

To the Honorable The Chief Justice and the Associate Justices of the Supreme Court of the United States:

A. B. Motors, Inc., and the 275 other petitioners whose names, because of the comparatively large number, are set out at the close of this petition, respectfully pray that a writ of certiorari issue to the United States Emergency Court of Appeals to review the judgment of that court which dismissed for asserted lack of jurisdiction in that court the complaints which Petitioners had filed in said court.

I. Summary Statement of Matter Involved

Petitioners sought to invoke the jurisdiction of the United States Emergency Court of Appeals judicially to review an administrative order of the Re-

spondent, the Director of Price Stabilization, by which he had dismissed without consideration of the merits (on the asserted ground that was "without jurisdiction" to consider them) certain protests which Petitioners had theretofore filed with Respondent against a certain order which the Director of Price Stabilization had theretofore issued and mailed to approximately 1500 retail automobile dealers throughout the country, among whom were these Petitioners. The reason which Respondent assigned in support of his view that he was without jurisdiction to consider the protests was that only orders which actually *establish* ceiling prices are protestable by virtue of Section 407 (a) of the Defense Production Act of 1950, as amended. (R. 4-6.) In so far as here pertinent such section reads, "At any time within six months after the effective date of any regulation or order relating to price controls under this title . . . any person subject to any provision of such regulation or order may, in accordance with regulations to be prescribed by the President, file a protest . . ."[1]

After such dismissal of their protests, Petitioners then timely filed complaints in the Emergency Court of Appeals. They prayed that that court at least remand the proceedings to the Respondent for hearing and consideration in accordance with the procedural processes specified in Section 407 of the Defense Production Act of 1950 as amended (R. 65). Respondent did not reply to the complaints on their merits. He did, however, move to dismiss them on

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[1] 64 Stat. 807, as amended by 66 Stat. 301, 50 U.S.C.A. Appx. 2107 (a). It is admitted that the order sought to be protested (R. 11-16) did not actually establish a ceiling price.

the ground that his order was not a protestable order within the purview of Section 407 (a) of the Act (R. 76.) The Emergency Court granted Respondent's motion without hearing and without opinion on January 17, 1953 (R. 84).

A more detailed statement of the matters leading up to the issuance of the protested order and the particular substantive provisions thereof is set out in the accompanying brief (infra pp. 18-21).

II. Question Presented

Whether the order in question, although it did not establish a ceiling price, was protestable under Section 407 (a) of the Defense Production Act of 1950, as amended. (If it was, the Emergency Court of Appeals obviously had jurisdiction under Section 408 (a) of said Act.[2])

III. Jurisdiction

The jurisdiction of this Court is invoked under Section 408 (c) of the Defense Production Act of 1950, as amended.[3]

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[2] 66 Stat. 302, 50 U.S.C.A. Appx. 2108 (a): "Any person who is aggrieved by the denial or partial denial of his protest may, within thirty days after such denial, file a complaint with the Emergency Court of Appeals . . . * * *"

[3] 66 Stat. 302, 50 U.S.C.A. Appx. 2108 (c): "Within thirty days after entry of a judgment or order, interlocutory or final, by the Emergency Court of Appeals, a petition for a writ of certiorari may be filed in the Supreme Court of the United States, and thereupon the judgment or order shall be subject to review by the Supreme Court in the same manner as a judgment of a United States court of appeals as provided in section 1254 of Title 28. * * *"

IV. Specification of Error to be Urged

The Emergency Court erred in holding, as it necessarily did in granting the Respondent's motion to dismiss the Petitioner's complaints, that the order in question is not a protestable order within the purview of Section 407 (a) of the Defense Production Act, and, therefore, the Emergency Court erred in dismissing the complaints and failing to grant the Petitioners' prayer that such court at least remand the proceedings to the Respondent and command him to take jurisdiction of the Petitioners' protests and hear and consider same in accordance with the procedural processes specified in Section 407 of the Act.

V. Opinion Below

There was no opinion accompanying the granting by the Emergency Court of the Respondent's motion to dismiss. The judgment granting the motion merely recited that the complaints were dismissed upon consideration of the Respondent's motion to dismiss them (R. 84).

VI. Reasons for Allowance of the Writ

1. *The question is important and undecided by this Court.*

The question whether the right to protest an order issued by the Director of Price Stabilization is limited by Section 407 (a) of the Defense Production Act of 1950 to orders which actually establish price ceilings and, therefore, does not extend to orders such as the one here sought to be protested, involves an important question of federal law as to the proper

scope of the right to protest and secure judicial review of administrative orders issued by the Director of Price Stabilization.

Such question is also of particular importance today in that it also involves the subsidiary, but very important, questions of (1) the extent of the Respondent's duty under the Act administratively to consider protests of his orders which do not actually establish ceiling prices, (2) whether citizens aggrieved by Respondent's orders can secure any judicial review thereof without first there having been an administrative consideration of such grievances in accordance with the administrative procedure specified by Section 407 (c)[4] of the Act, and, if not, then (3) to what court, if any, citizens may apply for judicial review of those of Respondent's orders which do not actually establish ceiling prices.

The main question above stated has not been but should be settled by this Court.

2. *The decision of the court below is in conflict with an applicable decision of this Court, Parker v. Fleming, 329 U. S. 530.*

Although the decision in *Parker v. Fleming* involved a provision of the old Emergency Price Control Act of 1942, the statutory provision there involved was the substantial counterpart of the provision here involved. In that case the Price Administrator had issued an order granting some landlords permission to institute eviction proceeding in a state court. Obviously such order did not establish a price or rent ceiling. The tenants against whom

[4] 64 Stat. 807, 50 U.S.C.A. Appx. 2107 (c).

the proceedings had been authorized sought to protest the order under the provisions of Section 203 (a) of the Emergency Price Control Act of 1942[5] which were substantially similar to those in Section 407 (a) of the Defense Production Act of 1950 under which these Petitioners sought to protest.[6] The Price Administrator dismissed the tenants' protests, just as did the Respondent in the present case. The tenants then sought review in the Emergency Court of Appeals, and that court also dismissed the complaints. This Court, however, reversed and held:

> "... we think that these tenants were entitled to have their protests considered by the Administrator and that the Emergency Court of Appeals had jurisdiction of their complaint." 329 U. S. at 538.

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[5] 50 U. S. C. Appx. 923 (a) (1946): "At any time after the issuance of any regulation or order under Section 2, ... any person subject to any provision of such regulation, order or price schedule, may, in accordance with regulations to be prescribed by the Administrator, file a protest. ... * * *"

[6] It could even be said that the right of protest granted in the Emergency Price Control Act of 1942 was more limited than that granted by the Defense Production Act of 1950. Under the 1942 Act the right granted by §203 (a) thereof was to protest "any regulation or order [issued] *under Section 2*" of the Act. (Emphasis supplied.) The only kind of regulation or order which Section 2 of the 1942 Act empowered the Administrator to issue was a "regulation or order [to] establish such maximum price or maximum prices as in his judgment will be fair and equitable and will effectuate the purposes of this Act." 50 U. S. C. Appx. 902 (a) (1946). On the other hand, Section 407 (a) of the 1950 Act grants the right to protest "any regulation or order *relating* to price controls under this title." (Emphasis supplied.)

While this Court's opinion in the *Parker* case was principally concerned with the question whether the tenants were "subject to" the order granting the certificate to the landlords, the decision necessarily carried with it the holding that the order was a protestable order, even though it was not an order which established a maximum ceiling.

VII. Conclusion

For the foregoing reasons, it is respectfully submitted that this petition for certiorari should be granted.

Respectfully submitted,

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Alvin, Texas

AVENUE MOTORS, INC.
1605 Washington
Houston, Texas

BANKSTON MOTOR COMPANY
113 East Concho
San Angelo, Texas

BARTON MOTOR COMPANY
Edinburg, Texas

BEALL CHEVROLET COMPANY
P. O. Box 357
Mathis, Texas

BERTRAM AUTO COMPANY
Bertram, Texas

BILL HALE MOTOR COMPANY
Box 1752
Odessa, Texas

BURTON CHEVROLET COMPANY
Haskell, Texas

CAPITOL CHEVROLET, INC.
501 Lamar Blvd.
Austin, Texas

CITY CHEVROLET COMPANY
Edna, Texas

CORBUSIER CHEVROLET COMPANY
Main at 20th
Bryan, Texas

COX CHEVROLET COMPANY
South Tennessee at Davis St.
McKinney, Texas

DAVIS MOTOR COMPANY
2710 Avenue H
Rosenberg, Texas

DEL RIO MOTOR COMPANY, INC.
Losoya at Griner
Del Rio, Texas

DILLION MOTOR COMPANY
10th St. & Railroad Ave.
Ballinger, Texas

EDENS CHEVROLET COMPANY
Corrigan, Texas

FRANK KENT MOTOR COMPANY
Main at Lancaster
Fort Worth, Texas

GAINES CADILLAC, INC.
712 West 7th Street
Fort Worth, Texas

G. C. FURR MOTOR COMPANY
223-29 N. Kentucky St.
McKinney, Texas

GULF PONTIAC-CADILLAC COMPANY
1918 Market Street
Galveston, Texas

HAGAN PONTIAC
113-119 North Crockett St.
Sherman, Texas

HALSELL MOTOR COMPANY, INC.
Main at Twenty-Third
Bryan, Texas

HEIN CHEVROLET
132 East Main Street
Fredericksburg, Texas

HOOKER VANDERGRIFF CHEVROLET CO.
Arlington, Texas

JACK STABLEFORD PONTIAC COMPANY
1014 Lamar
Austin, Texas

JOE L. STALCUP
Box 629
Brownwood, Texas

JOE'S CHEVROLET COMPANY
P. O. Box 1111
Beeville, Texas

KELSEY MOTOR COMPANY
Deport, Texas

LAMAR CHEVROLET COMPANY
Paris, Texas

LANEY NASH COMPANY
700 North Locust Street
Denton, Texas

LeNOIR OLDSMOBILE COMPANY
1319 West Harrison
Harlingen, Texas

LEWIS CHEVROLET COMPANY
Box 516
Goliad, Texas

LONE STAR CHEVROLET
P. O. Box 726
Big Spring, Texas

McGRAW MOTOR COMPANY
P. O. Box 222
Eastland, Texas

MANSKE MOTORS
8th & Levee Streets
Brownsville, Texas

MEINERS MOTOR COMPANY
LaGrange, Texas

MORGAN MOTOR COMPANY, INC.
1007 Scott Avenue
Wichita Falls, Texas

MUELLER MOTORS
830 S. Presa Street
San Antonio, Texas

O.S.T. GARAGE
Crosby, Texas

PAN AMERICAN MOTOR COMPANY
Washington & Convent
Laredo, Texas

PARK CHEVROLET COMPANY
San Saba, Texas

PARKS MOTOR COMPANY
201 S. Sherman Street
Mexia, Texas

PHIL DUNKLIN MOTORS
1324 Texas Avenue
Texarkana, Texas

PREWIT MOTOR COMPANY
Stamford, Texas

ROBINSON MOTOR COMPANY
1601 8th Street
Bay City, Texas

RUSSELL MOTOR COMPANY
Perryton, Texas

RYAN MOTOR COMPANY
2401 West Seventh
Fort Worth, Texas

SAMES MOTOR COMPANY
1118 Houston
Laredo, Texas

SMITH-MAY MOTOR COMPANY
947 Procter Street
Port Arthur, Texas

STARING PONTIAC COMPANY
516 W. Main Street
Denison, Texas

TEXAS MOTORS
1101 West 7th St.
Fort Worth, Texas

VALLEY MOTOR COMPANY
P. O. Box 991
Harlingen, Texas

VAUGHN CHEVROLET COMPANY
309 South First Street
Lamesa, Texas

VINCENT MURPHY CHEVROLET CO.
Archer City, Texas

WESLACO MOTOR & IMPLEMENT CO.
501 E. State Highway
Weslaco, Texas

WEYEL MOTORS
420 North Austin St.
Seguin, Texas

WISE MOTOR COMPANY
Falfurrias, Texas

WRIGHT CHEVROLET COMPANY
P. O. Box W
West Columbia, Texas

No._____

In the Supreme Court of the United States

OCTOBER TERM, 1952

A. B. MOTORS, INC., ET AL., *Petitioners*

VS.

JOSEPH FREEHILL, DIRECTOR OF PRICE STABILIZATION, *Respondent*

BRIEF FOR PETITIONERS

I. Opinion Below

No opinion accompanied the rendition of the judgment of the Emergency Court of Appeals. Such judgment was merely expressed in a single sentence reciting that upon consideration of Respondent's motion to dismiss the complaints for want of jurisdiction the consolidated causes were dismissed (R. 84).

II. Jurisdiction

Jurisdiction of this Court is invoked under Section 408 (c) of the Defense Production Act of 1950, as amended. 66 Stat. 302, 50 U. S. C. A. Appx. 2108 (c).

III. Specification of Error

The Emergency Court erred in holding, as it necessarily did in granting the Respondent's motion to dismiss the Petitioner's complaints, that the order in question is not a protestable order within the purview of Section 407 (a) of the Defense Production Act, and, therefore, the Emergency Court erred in dismissing the complaints and failing to grant the Petitioners' prayer that such court at least remand the proceedings to the Respondent and command him to take jurisdiction of the Petitioners' protests and hear and consider same in accordance with the procedural processes specified in Section 407 of the Act.

IV. Statement

Before the Respondent issued the presently protested order he had theretofore issued what all parties now refer to as his first order (R. 39), a statement of the nature of which and the proceedings relative thereto is believed appropriate in order to show how this case reached its present posture. Such first order was published in Washington on August 21, 1952, and there deposited in the mail addressed to many different automobile dealers, including these Petitioners. Such order contained ex parte recitations by Respondent to the effect that a citizen of Utah by the name of Paul L. Harmon had theretofore filed a protest against Ceiling Price Regulation 83 in so far as same affected him and also recited that a civil action had been instituted against Mr. Harmon by the United States in a federal district

court in Utah, in which suit the United States sought to recover some damages from Mr. Harmon in Utah because of alleged violations of Ceiling Price Regulation 83 by him in Utah (R. 39). (None of these Petitioners have ever been made parties to such suit against Mr. Harmon. None of them have ever been served with any process of any nature issued out of the court in which Mr. Harmon is a defendant. None of them have ever been subpoenaed to testify, either directly or by deposition, in such suit with right of cross-examination allowed to either Mr. Harmon or the United States.)

In such first order the Respondent said that Mr. Harmon had objected to Ceiling Price Regulation 83 because same "prohibits *him* from recovering various items of cost which *he* historically recovered in *his* selling price of new automobiles. Chief among these costs have been the costs incurred in transporting *his* automobiles from various loading places to *his* place of business" (R. 39). (Emphasis supplied.) Said first order also contains some further ex parte statements by the Respondent as to the nature of some of the other contentions made in Mr. Harmon's otherwise unknown protest (R. 40). Absolutely no intimation whatsoever, however, is given, either by the Respondent's ex parte recitations or otherwise, as to the nature of the claims made by either the United States or Mr. Harmon in the civil action pending against Mr. Harmon in the federal district court in Utah.

After stating in said first order, "The verity of the claims in support of the objections to CPR 83 must be established or disproved," (R. 40-41) the Respondent then purported to order each of the ad-

dressees of his first order to answer a mass of questions and furnish him with a mass of documentary evidence (R. 41-43).

No offer at all was made to recompense any of the addressees, either by way of witness fees or otherwise, for the expense which they would necessarily have incurred in complying with the order.

On September 5, 1952, the Respondent issued what he denominated an Order Supplementing Order Propounding Interrogatories (R. 44). In such order he stated that it had come to his attention that there were additional reasons justifying the issuance of the first order, which such reasons were the filing of two complaints in the Emergency Court of Appeals, one by a citizen of Little Falls, Minnesota, on June 13, 1952 (more than two months previously) and another by a citizen of Ogden, Utah, on July 31, 1952 (almost two months previously). None of these Petitioners were made parties to any of such actions, and Respondent did not cause any copies of any of the pleadings filed in any of said causes to accompany copies of either the first order of August 31, 1952, or the supplemental order of September 5, 1952.

While such first order was still outstanding, some of the addressees thereof filed protests thereto, one of such protests being filed by Logan Drye Motor Co. on September 23, 1952. The Respondent did not include a copy of the Logan Drye protest or any of the other protests to the first order in the transcript which he filed in the Emergency Court of Appeals, but he did include a copy of his order dismissing the Logan Drye protest on October 6, 1952, on the ground that Respondent was "without jurisdiction" to consider it (R. 5-6).

On October 13, 1952, Respondent modified his earlier first order and issued what he denominated Second Order Propounding Interrogatives (R. 11-16) which is the basic cause of the present controversy. A copy of such order was mailed to many automobile retail dealers throughout the country, included among whom were these Petitioners. These Petitioners felt aggrieved by such order and believed that they had a right to protest the same in the manner prescribed by Section 407 (a) of the Defense Production Act of 1950, as amended. 64 Stat. 807, as amended by 66 Stat. 301, 50 U. S. C. A. Appx. 2107 (a). Each of these Petitioners did then file a protest of such order with Respondent. (A copy of one of such protests is at R. 1.) Respondent dismissed such protests on the ground that he was "without jurisdiction" to consider them (R. 4-6).

These Petitioners then sought judicial review of Respondent's said administrative action. Pursuant to what they conceived to be their rights under Section 408 (a) of the Act (66 Stat. 302, 50 U. S. C. A. Appx. 2108 (a)) Petitioners filed complaints in the United States Emergency Court of Appeals (R. 54-75). The causes were consolidated (R. 83-84). Respondent did not reply to such complaints on their merits. He did, however, file similar motions to dismiss the complaints on the ground that the order against which the protests had theretofore been filed was "not an order relating to price controls within the meaning of Section 407 (a) of the Defense Production Act of 1950, as amended, and this Court does not have jurisdiction to enjoin or set aside such order" (R. 76-80). The Emergency Court granted Respondent's motions to dismiss (R. 84).

V. Argument

1. *The plain wording of the applicable statutes required the Emergency Court to at least grant Petitioners' prayer to remand the proceedings to the Respondent for consideration by him of the merits of Petitioners' protests in accordance with the administrative procedures specified in Section 407 (a) of the Act.*

Section 407 (a) of the Act, as amended,[1] provides that any person subject to any provision of "any regulation or order relating to price controls under this title" may file a protest thereof. Section 407 (c)[2] then prescribes the administrative procedure to be followed in consideration and disposition of such protests by the Respondent. Section 408 (a)[3] then provides that any person aggrieved by the denial of his protest may file a complaint with the Emergency Court of Appeals, whereupon such court shall have jurisdiction, inter alia, "to remand the proceeding . . . for further action."

By virtue of the plain language of these sections of the Act, Petitioners respectfully submit that each of them had the right first to file a protest with Respondent against the order in question, to have such protest administratively heard and considered as specified in Section 407 (c), and, if aggrieved by the administrative denial of such protest, to then seek judicial review thereof by filing a complaint in the Emergency Court of Appeals.

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[1] 64 Stat. 807, as amended by 66 Stat. 301, 50 U.S.C.A. Appx. 2107 (a).

[2] 64 Stat. 807, 50 U.S.C.A. Appx. 2107 (c).

[3] 64 Stat. 808, as amended by 66 Stat. 302, 50 U.S.C.A. Appx. 2108 (a).

To hold otherwise, particularly in this case involving so many different citizens in different sections of the country, and to say that if there is any right to protest the order, such right can only be exercised in resistance to a civil enforcement action instituted pursuant to Section 705 (a) of the Act[4] or in defense to a criminal action instituted pursuant to Section 705 (d) of the Act,[5] is pregnant with the possibility of many different and conflicting decisions by different district and circuit courts relative the initial validity of general orders such as this one. It is submitted that Section 408 of the Act, investing the Emergency Court with jurisdiction to review at least some of the administrative orders of this Respondent, was motivated by the same considerations which motivated the original creation of the court in the Emergency Price Control Act of 1942. One of such considerations was to avoid the confusion that would result from conflicting decisions in different circuits on the same regulations and orders. See S. Rept. No. 931, 77th Cong., 2nd Sess., p. 7, wherein it is said:

> "The emergency court is established in order to avoid the confusion which would result from conflicting decisions in different circuits on the same regulations. * * *"

2. *Respondent's contention that Section 407 (a) of the Act limits the right of protest to orders which*

[4] 64 Stat. 816 as amended by 65 Stat. 139, 50 U.S.C.A. Appx. 2155 (a).

[5] 64 Stat. 816, 50 U.S.C.A. Appx. 2155 (d).

"establish ceiling prices" is refuted by the statutory language when viewed in light of the decision in Parker v. Fleming, 329 U. S. 530.

When Respondent dismissed Petitioners' complaints without hearing, he asserted that the order sought to be protested was not protestable under Section 407 (a) and that, therefore, he was "without jurisdiction" to consider the protests (R. 4-6). He contended that Section 407 (a) was intended by Congress to be given the same construction that Section 203 (a) of the Emergency Price Control Act of 1942[6] had received (R. 6-7).

This Court has held that the right of protest which was granted by Section 203 (a) of the Emergency Price Control Act of 1942 was not limited to orders which "established" price or rent ceilings. In *Parker v. Fleming*, 329 U. S. 530 (1947), this Court held the Emergency Court of Appeals erroneously dismissed the complaints of some tenants who had attempted to protest an order of the Price Administrator which granted a certificate authorizing institution of some eviction proceedings in the New York state courts. While the opinion in that case is directed to the question whether the tenants were "subject to" the order granting the certificate to the landlords, the decision in the case necessarily carried with it the holding that the order was a protestable order, the Court declaring,

> ". . . we think that these tenants were entitled to have their protests considered by the Administrator and that the Emer-

[6] 50 U. S. C. Appx. 923 (a) (1946).

> gency Court of Appeals had jurisdiction of their complaint." 329 U. S. at 538.

It is not unreasonable to assume that the Senate Banking and Currency Committee, which reported out the bill which became the Defense Production Act of 1950, was advised of this Court's opinion in *Parker v. Fleming*. In the only significant statement made relative Section 407, such committee said (Senate Report No. 2250, 81st Cong., 2d Sess. (1950), at 39-40):

> "Section 407 makes provisions for the filing of protests against regulations and orders by persons affected by those orders. Section 407 provides that any time within six months after the issuance of an order, a person subject to it may file a protest which the President must grant or deny within 30 days. (In the case new grounds for the protest arise after the issuance of an order, the protest may be filed within 6 months after the new grounds arise.) Where the protestant requests, he may have a hearing before a board of review, with an opportunity for presenting evidence and giving an oral argument. A similar provision was contained in the Emergency Price Control Act of 1942 (bill, pp. 48-50)."

If Congress had intended that the right of protest should be limited to orders which "establish" ceiling prices, it would have been an easy matter to say so. By using the elastic phrase "relating to price controls" in Section 407 (a), which is even more elastic than the language in 203 (a) of the Emergency

Price Control Act of 1942, Congress must have envisaged that Respondent might issue some other kind of orders than just those *establishing* price or rent controls (e.g., such as that involved in *Parker v. Fleming, supra*). Congress must further have envisaged that such latter type of orders might aggrieve some citizens. It evidently then deemed it wise to apply the primary administrative jurisdiction doctrine and prescribed that all grievances arising from the issuance of orders "relating" to price controls should first be presented to and heard by the Respondent in the manner prescribed by Section 407 (c) and that, if aggrieved by his action thereof, appeal therefrom could be taken to the Emergency Court as prescribed by Section 408 (a). See also discussion of the Congressional "mood" relative the right and scope of judicial review in *Universal Camera Corp. v. Nat'l L. R. Bd.*, 340 U. S. 474, 487.

It is respectfully submitted that there is no other reasonable explanation for the language which Congress did use.

While not shown in the record, counsel appearing for the Respondent in the Emergency Court argued in a memorandum in support of the motion to dismiss that, by use of the words "this title" in the phrase "order relating to price controls under this title", the right of protest was limited to orders issued pursuant to authority conferred in Title IV of the Act; Respondent's counsel then asserted that the protested order had been issued by Respondent pursuant to the authority conferred by Section 705 (a)[7] which is in Title VII of the Act. (Respondent

[7] 64 Stat. 816, as amended by 65 Stat. 139, 50 U.S.C.A. Appx. 2155 (a).

himself had not theretofore made such contention; he had therefore stated that the basis of his decision to dismiss the protests was his belief that only orders establishing price ceilings were protestable (R. 6-7). It is believed that the actual decision in *Parker v. Fleming, supra*, p. 24, is, without more, sufficient refutation of such argument, if it should be renewed here.

Conceding arguendo, however, that the right of protest is limited by the quoted language to orders issued in purported conformity with powers conferred in Title IV, such concession does not carry with it the conclusion that this protested order was issued pursuant to authority conferred outside of Title IV—and it most certainly does not carry the concession that the order actually was issued pursuant to authority conferred by Section 705 (a) in Title VII. Section 705 (a) delegates the authority and prescribes the conditions of its exercise by which Respondent may (within applicable limitations of relevancy, specificity and reasonableness) himself make an inspection of records and take testimony in the course of enforcement or administration of the Act and the regulations and orders properly issued thereunder. It does not prescribe the conditions or grant authority under which Respondent may conduct proceedings such as the one initiated by Mr. Harmon of Utah, to test the validity vel non of one of his price regulations.

That Respondent has heretofore apparently been of the view that his authority under Section 705 (a) does not extend to the issuance of an order such as the one here protested is indicated by Respondent's

directives as to how his Section 705 (a) powers shall be exercised by his subordinates. See Respondent's Enforcement Procedure Regulation No. 1 defining "Inspection Authorizations" and the manner of their effectuation[8] and his Enforcement Procedure Regulation No. 2 defining subpenas and the manner of their effectuation.[9]

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[8] 16 Fed. Reg. 2496: "Section 1. An Inspection Authorization as used herein is an order which requires any person to permit a duly authorized representative of the Office of Price Stabilization to inspect books, records and other writings in the possession or control of said person at the place where such person usually keeps them; and to inspect the premises or property of said person.

"* * *

"Sec. 4. Service of an Inspection Authorization upon an individual shall be made by personally serving the Inspection Authorization upon the person named therein. Service upon other than an individual may be had by serving an officer, a managing or general agent, or any other agent authorized by appointment or by law to accept service of process. * * * In case of failure to make service, the reasons for the failure should be stated on the original Inspection Authorization.

"* * *"

[9] 16 Fed. Reg. 2496: "Section 1. Subpenas may be issued in connection with any investigation or proceeding relating to the administration or enforcement of the Defense Production Act of 1950, or any regulation or order issued thereunder by the Office of Price Stabilization. Subpenas may require any person to appear and testify under oath or to appear and produce books, records and other writings at any designated place.

"* * *

"Sec. 3. Service of a subpena upon an individual shall be made by personally serving the subpena upon the person named therein. * * * Witnesses are entitled to be paid the same fees and mileage that are paid witnesses in the courts of the United States but such fees and mileage shall not be tendered at the time of service of the subpena.

"* * *."

Furthermore, the order here protested certainly does not affirmatively appear on its face to have been issued pursuant to any powers granted to Respondent under Section 705 (a). If anything, the reciting in the order of the considerations inducing its issuance indicate that it was thought necessary so to do in order to comply with that part of Section 402 (c) in Title IV providing that "any regulation or order under this title . . . shall be accompanied by a statement of considerations involved in the issuance of such regulation or order."

Respondent's counsel also contended in the Emergency Court, although Respondent himself had not theretofore done so, that the order in question was an interim order and not a final order in that it had been issued in the course of investigation of the merits of the protest against Ceiling Price Regulation 83 filed by Mr. Harmon of Utah. The order might have been an interim order so far as Mr. Harmon was concerned (see *Fed. Power Comm. v. Metropolitan Edison Co.*, 304 U. S. 375), but it most certainly was a final order so far as the persons directed to comply with it were concerned. Cf. *U. S. v. Fleischman*, 339 U. S. 349; cf. also *Hiss v. U. S.*, 185 F. (2d) 822, cert. den. 340 U. S. 948.

VI. Conclusion

For the foregoing reasons, it is respectfully submitted that this petition should be granted and that this Court should, upon hearing hereof, remand the proceedings to the Respondent for hearing and con-

sideration of Petitioners' protests in accordance with the procedure specified in Section 407 (c) of the Defense Production Act of 1950, as amended.

Respectfully submitted,

DAN MOODY

Attorney for Petitioners

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In the Supreme Court of the United States

OCTOBER TERM, 1952

No. 606

A. B. MOTORS, INC., ET AL., PETITIONERS

v.

JOSEPH FREEHILL, DIRECTOR OF PRICE STABILIZATION

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES EMERGENCY COURT OF APPEALS

BRIEF FOR RESPONDENT IN OPPOSITION

OPINION BELOW

The judgment of the Emergency Court of Appeals (R. 84) dismissing the complaints for lack of jurisdiction was not accompanied by an opinion.

JURISDICTION

The judgment of the Emergency Court of Appeals was entered on January 17, 1953 (R. 84). The petition for a writ of certiorari was filed on February 16, 1953. The jurisdiction of this Court

is invoked under Section 408(c) of the Defense Production Act of 1950 as amended (64 Stat. 808, 66 Stat. 302, 50 U.S.C. App. (Supp. V) 2108(c)) and 28 U.S.C. 1254.

QUESTION PRESENTED

Whether an order directed to certain automobile dealers propounding interrogatories and admittedly not establishing a ceiling price was a protestable order "relating to price controls" under Title IV of the Defense Production Act which required a hearing before the Board of Review and conferred jurisdiction on the Emergency Court of Appeals to review such order under Section 408(a) of that Act.

STATUTE INVOLVED

The provisions of the Defense Production Act of 1950, as amended (64 Stat. 798, 66 Stat. 296, 50 U.S.C. App. (Supp. V) 2061, *et seq.*) are set forth in pertinent part in the Appendix hereto, pp. 13-23.

STATEMENT

In connection with protest proceedings pending before the Office of Price Stabilization, the Director of Price Stabilization on August 21, 1952, issued an order propounding interrogatories toward those dealers who had filed protests against Ceiling Price Regulation 83 (16 F.R. 10594), and also toward a group of approximately nine hundred retail automobile dealers throughout the country who were considered to be representative (R. 11, 25). These interrogatories (R. 40-41) were designed to obtain

information as to the retail automobile industry's business and pricing practices and markups, both under price control and prior to the institution of price control, to determine the level of selling prices during those periods, and to determine the effect, if any, that the Director's regulations had on these prices and the prices of new automobiles. The Director determined that the information required to be submitted by these interrogatories was necessary for a proper determination of the protests. (R. 39-43.) On September 4, 1952, the Director issued an order, supplementing the order propounding interrogatories, which set forth, as additional reasons for the issuance of the order propounding interrogatories, the issues raised by two complaints filed in the Emergency Court of Appeals attacking the provisions of Supplementary Regulation 5 and Ceiling Price Regulation 83 (R. 44-45). After the issuance of the first order propounding interrogatories, the Director, at the instance of persons subject thereto, reconsidered it with a view toward easing the burden and lessening the volume of the data sought. Following consultations with the Bureau of the Budget, the Director, on October 13, 1952, issued his second order propounding interrogatories. The second order incorporated changes suggested by members of the retail automobile industry and considerably relaxed the reporting requirements. (R. 11-16).

On September 23, 1952, a document purporting to be a protest against the first order propounding interrogatories was filed by the Logan Drye Motor

Company of McAllen, Texas (R. 5). On October 6, 1952, the Director ordered the dismissal of this "protest" on the ground that it was not a protest against "a regulation or order relating to price controls" within the meaning of Section 407(a) of the Defense Production Act of 1950 and therefore could not be considered on its merits as a "protest" (R. 5-10). Subsequently, several additional "protests" were filed against the first order propounding interrogatories. In October and November, about 275 other so-called protests were filed against the second order propounding interrogatories (R. 1-3). These were dismissed on the same grounds as the Logan Drye "protests" (R. 4). A copy of the order of dismissal of the Logan Drye "protests" (R. 5-10) was attached to each subsequent order of dismissal (R. 4).

Beginning on December 4, 1952, 276 retail automobile dealers in the State of Texas, who had filed so-called protests against the second order propounding interrogatories, which had been denied by the Director, filed complaints in the Emergency Court of Appeals (R. 54-75) which were consolidated on petitioners' motion (R. 82-84). Respondent's motion to dismiss the complaints for lack of jurisdiction on the ground that the order propounding interrogatories was "not an order relating to price controls within the meaning of Section 407(a) of the Defense Production Act of 1950" (R. 76-80) was granted on January 17, 1953, by that court (R. 84).

ARGUMENT

In view of the fact that price controls have now been removed from all categories of merchandise, the question presented by this case does not warrant review by this Court.[1] The issue is confined to the question whether the Emergency Court of Appeals has jurisdiction to pass upon the validity of certain procedural orders, propounding interrogatories, issued by the Director of Price Stabilization, designed to obtain information for the purpose of administering and enforcing price controls. Since price controls have been lifted, the challenged orders have present vitality only in connection with a few pending enforcement proceedings.[2] In the circumstances, it is of no large public importance whether questions concerning the validity of such orders may be adjudicated by the Emergency Court of Appeals, or whether such questions are reviewable only in the United States district courts.

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[1] By Amendment 1 to Overriding Order 44, effective March 17, 1953, price controls were removed from all commodities and services. See 18 F. R. 1567.

[2] There are now pending in the Emergency Court of Appeals two proceedings that challenge the validity of Ceiling Price Regulation 83 (16 F. R. 10594). These proceedings were brought directly in the Emergency Court of Appeals under permission granted by the United States District Courts for the Districts of Minnesota and Utah, respectfully, under Section 408(e)(1) of the Defense Production Act (64 Stat. 809-810), in which courts enforcement proceedings are pending. (R. 44-45.) Consequently, we do not suggest that this case is moot.

Section 705(a) of the Defense Production Act, *infra*, pp. 20-22, authorizes the President to obtain information necessary to enforce or administer that Act by subpoena or otherwise for a period of two years after the Act expires.

The decision of the court below declining to assume jurisdiction of this case is clearly correct. The procedural order of October 13, 1952 (R. 11-16), challenged by petitioners, was in no way an exercise of any part of the power granted by Congress to the President (or his delegate) [3] to implement the Defense Production Act of 1950 with regulations or orders establishing price ceilings. In short, it was no part of the rule-making power. It follows that it was not a "regulation or order relating to price controls" within the meaning of Section 407 (a) of the Defense Production Act, *infra,* pp. 14-15, which might, under that section, be the subject of a protest, the denial of which would establish a jurisdictional basis for a proceeding in the Emergency Court of Appeals under Section 408(a) of the Act, *infra,* pp. 16-18, to have the validity of the order judicially determined.

The Emergency Court of Appeals was created and vested with jurisdiction by Section 204 of the Emergency Price Control Act of 1942, 56 Stat. 23, 32. The Congressional purpose in creating that court was to establish a single court with exclusive power to determine the validity of price regulations and orders and thus avoid the confusion and unequal control, during a national emergency, which would result from having a large number of courts making such determinations in different parts of

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[3] Section 703(a) of that Act (64 Stat. 816) provides that:

> Except as otherwise specifically provided, the President may delegate any power or authority conferred upon him by this Act to any officer or agency of the Government.

the nation. See *Yakus* v. *United States*, 321 U. S. 414. There was, therefore, no need to give the Emergency Court of Appeals jurisdiction beyond that of passing upon the validity of those regulations and orders which established, directly or indirectly, maximum rents and prices, and the enforcement of regulations and orders of all kinds was, therefore, left to other courts. We find nothing in the language or history of the Defense Production Act of 1950 to indicate a Congressional intention that an enlargement of the jurisdiction of the Emergency Court of Appeals in this respect was contemplated. And the Emergency Court of Appeals has not assumed to exercise jurisdiction in cases involving matters which it did not consider to be price or rent regulations. See, *e.g.*, *Fast* v. *DiSalle*, 193 F. 2d 181 (E. C. A. 1951).

The order here in question was but an exercise of the broad administrative subpoena power granted by Section 705(a) of the Defense Production Act of 1950, *infra*, pp. 20-21, which authorizes the President "by regulation, subpoena, or otherwise, to obtain such information from * * * any person as may be necessary or appropriate, in his discretion, to the enforcement or the administration of this act and the regulations or orders issued thereunder." The purpose of the order was purely investigatory. It did not purport to establish price ceilings; nor did it implement a price-ceiling regulation by explanation or supplementation. It prescribed no rule of conduct the violation of which

subjected any person to trial and punishment; compliance with the order might be enforced only in a civil proceeding in a United States district court, and the contempt punishment prescribed was for defiance of the *court's* order, not as punishment for refusal to comply with the administrative order.

The order was therefore one falling within the jurisdiction of the district courts, and not of the Emergency Court of Appeals. Section 705(a) of the Defense Production Act, *infra,* pp. 20-21, provides as follows:

> In case of contumacy by, or refusal to obey a subpoena served upon, any person referred to in this subsection, the district court of the United States for any district in which such person is found or resides or transacts business, upon application by the President, shall have jurisdiction to issue an order requiring such person to appear and give testimony or to appear and produce documents, or both; and any failure to obey such order of the court may be punished by such court as a contempt thereof.

We submit that the word "subpoena" in the above provision was intended to and does refer to *all* compulsory orders issued pursuant to the first sentence of Section 705(a), *infra,* pp. 20-21. Otherwise, there would appear to be no means provided by the Act for enforcement of investigatory powers utilized by "regulation * * * or otherwise," as authorized by the section. Cf. *Porter* v. *Gantner &*

Mattern Co., 156 F. 2d 886 (C. A. 9), wherein a substantially similar provision of the Emergency Price Control Act of 1942 was so construed.

There can be no question that jurisdiction to determine the validity of administrative subpoenas issued under Section 202 of the Emergency Price Control Act of 1942 was vested in the United States district courts. *Fleming* v. *Mohawk Co.*, 331 U.S. 111; *Provenzano* v. *Porter*, 159 F. 2d 47 (C.A. 9), certiorari denied, 331 U.S. 816; *Smith* v. *Porter*, 158 F. 2d 372 (C.A. 9), certiorari denied, 331 U.S. 816; *Bowles* v. *Bay of N. Y. Coal Co.*, 152 F. 2d 330 (C.A. 2); *Simpson* v. *Fleming*, 161 F. 2d 297 (C.A. 10); *Pinkus* v. *Porter*, 155 F. 2d 90 (C.A. 7). And the district courts have likewise exercised jurisdiction with respect to subpoenas issued under the Defense Production Act of 1950. *Application of Compton*, 101 F. Supp. 547 (N.D. Tex.); *In re Bleichfeld Bag & Burlap Co.*, 105 F. Supp. 162 (W.D. N.Y.). We submit that the word "subpena" as used in Section 705 of the Defense Production Act is broad enough to include the compulsory order here involved.

Congress was no doubt aware at the time it enacted the Defense Production Act of 1950 that the district courts had, from the inception of price control in 1942, exercised jurisdiction with respect to subpoenas and like compulsory orders of an investigatory nature, and that the Emergency Court of Appeals had made no judicial pronouncement to the effect that it was vested with that jurisdiction. And so far as we have been able to ascertain,

Congress, when considering the Defense Production Act, was presented with no problem which seemed to make it desirable to change the existing system with respect to the judicial review of subpoenas and other compulsory orders. Consequently, in the absence of clear language manifesting such intention, it cannot be reasonably assumed that Congress intended the Emergency Court of Appeals to have jurisdiction over such orders, particularly since it expressly continued that jurisdiction in the district courts.

Petitioners' contention that the decision of the court below is in conflict with *Parker* v. *Fleming*, 329 U.S. 531, is without substance. That case arose under the Emergency Price Control Act of 1942 and involved an order which authorized a landlord to bring judicial eviction proceedings against his tenant. The question presented was whether the tenant, who was "immediately, substantially, and adversely affected by the order," was a person subject to the order for the purpose of protesting it and then bringing a proceeding in the Emergency Court of Appeals to test its validity. This Court held that he was. The order there involved was one over which the district courts had no jurisdiction whatever. Thus, it could not be the subject of enforcement proceedings in a district court. It is plain, therefore, that the construction which this Court, in the *Parker* case, placed on the provisions of the Emergency Price Control Act of 1942 vesting jurisdiction in the Emergency Court of Appeals, is not in conflict with the construction implicitly

placed by the court below on the corresponding provisions of the Defense Production Act of 1950, merely because the order involved in the *Parker* case did not purport to establish a price ceiling.

In the circumstances of this case, the decision of the court below works no hardship on petitioners. They are not without remedy; if they wish to test the validity of the order propounding interrogatories served upon them, they may decline to comply with it as they might in the case of a formal administrative subpoena. If the Director of Price Stabilization then concludes that the order should be enforced, he may bring civil proceedings in the appropriate district courts for that purpose, in which proceedings petitioners may have the court determine the validity of the order. And petitioners may, of course, seek further administrative relief from the Director of Price Stabilization.

CONCLUSION

The decision of the court below is correct, no question of public importance is presented, and further review is not warranted. It is respectfully submitted, therefore, that the petition for a writ of certiorari should be denied.

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MARCH, 1953.

APPENDIX

Section 402 of the Defense Production Act of 1950, 64 Stat. 803, as amended, 65 Stat. 134, 66 Stat. 298, provides in pertinent part as follows:

> (a) In order to carry out the objectives of this title, the President may encourage and promote voluntary action by business, agriculture, labor and consumers. In proceeding under this subsection the President may exercise the authority to approve voluntary programs and agreements conferred on him under section 708, and may utilize the services of persons and agencies as provided in section 710.
>
> (b)(1) To the extent that the objectives of this title cannot be attained by action under subsection (a), the President may issue regulations and orders establishing a ceiling or ceilings on the price, rental, commission, margin, rate, fee, charge, or allowance paid or received on the sale or delivery, or the purchase or receipt, by or to any person, of any material or service, and at the same time shall issue regulations and orders stabilizing wages, salaries, and other compensation in accordance with the provisions of this subsection.
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> * * * * *
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> (c) * * * Any regulation or order under this title shall be such as in the judgment of the President will be generally fair and equitable and will effectuate the purposes of this title, and shall be accompanied by a statement of considerations involved in the issuance of such regulation or order. The President, in estab-

lishing and adjusting ceilings with respect to materials and services, and in stabilizing and adjusting wages, salaries, and other compensation, shall make such adjustments as he deems necessary to prevent or correct hardships or inequities.

Section 407 of the Defense Production Act of 1950, 64 Stat. 807, as amended, 66 Stat. 301, 50 U. S. C. App. 2107, provides as follows:

(a) At any time within six months after the effective date of any regulation or order relating to price controls under this title or rent controls under the Housing and Rent Act of 1947, as amended, or, in the case of new grounds arising after the effective date of any such regulation or order, within six months after such new grounds arise, any person subject to any provision of such regulation or order may, in accordance with regulations to be prescribed by the President, file a protest specifically setting forth objections to any such provision and affidavits or other written evidence in support of such objections. Statements in support of any such regulation or order may be received and incorporated in the transcript of the proceedings at such times and in accordance with such regulations as may be prescribed by the President. Within a reasonable time after the filing of any protest under this section, but in no event more than thirty days after such filing, the President shall either grant or deny such protest in whole or in part, notice such protest for hearing, or provide an

opportunity to present further evidence in connection therewith. In the event that the President denies any such protest in whole or in part, he shall inform the protestant of the grounds upon which such decision is based, and of any economic data and other facts of which the President has taken official notice.

(b) In the administration of this title and the Housing and Rent Act of 1947, as amended, the President may take official notice of economic data and other facts, including facts found by him as a result of action taken under section 705 of this Act, or section 206 of the Housing and Rent Act of 1947, as amended, as the case may be.

(c) Any proceedings under this section may be limited by the President to the filing of affidavits, or other written evidence, and the filing of briefs: *Provided, however,* That upon the request of the protestant, any protest filed in accordance with subsection (a) of this section shall, before denial in whole or in part, be considered by a board of review consisting of one or more officers or employees of the United States designated by the President in accordance with regulations to be promulgated by him. Such regulations shall provide that the board of review may conduct hearings and hold sessions in the District of Columbia or any other place, as a board, or by subcommittees thereof, and shall provide that, upon the request of the protestants and upon a showing that material facts would be adduced thereby, subpenas shall issue to procure the evidence of persons,

or the production of documents, or both. The President shall cause to be presented to the board such evidence, including economic data, in the form of affidavits or otherwise, as he deems appropriate in support of the provision against which the protest is filed. The protestant shall be accorded an opportunity to present rebuttal evidence in writing and oral argument before the board, and the board shall make written recommendations to the President. The protestant shall be informed of the recommendations of the board and, in the event the the President rejects such recommendations in whole or in part, shall be informed of the reasons for such rejection.

(d) Any protest filed under this section shall be granted or denied by the President, or granted in part and the remainder of it denied within a reasonable time after it is filed. Any protestant who is aggrieved by undue delay on the part of the President in disposing of his protest may petition the Emergency Court of Appeals for relief; and such court shall have jurisdiction by appropriate order to require the President to dispose of such protest within such time as may be fixed by the court. If the President does not act finally within the time fixed by the court, the protest shall be deemed to be denied at the expiration of that period.

Section 408 of the Defense Production Act of 1950, 64 Stat. 808, as amended, 66 Stat. 302, 50 U. S. C. App., Supp. V, 2108, provides as follows:

(a) Any person who is aggrieved by the denial or partial denial of his protest may, within

thirty days after such denial, file a complaint with the Emergency Court of Appeals specifying his objections and praying that the regulation or order protested be enjoined or set aside in whole or in part. A copy of such complaint shall forthwith be served on the President, who shall certify and file with such court a transcript of such portions of the proceedings in connection with the protest as are material under the complaint. Such transcript shall include a statement setting forth, so far as practicable, the economic data and other facts of which the President has taken official notice. Upon such filing, the court shall have exclusive jurisdiction of the proceeding and of all questions determined therein, and shall have power to grant such temporary relief or restraining order as it deems just and proper; to permanently enjoin or set aside, in whole or in part, the regulation or order or the amendment of or supplement to the regulation or order protested; to make and enter upon the pleadings, evidence, testimony, and proceedings set forth in such transcript a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the President; to dismiss the petition; or to remand the proceeding to the President for further action in accordance with the court's decree: *Provided,* That the regulation or order may be modified or rescinded by the President at any time notwithstanding the pendency of of such complaint. No objection to such regulation or order, and no evidence in support of

any objection thereto, shall be considered by the court, unless such objection shall have been set forth by the complainant in the protest or such evidence shall be contained in the transcript. The findings of the President with respect to questions of fact, if supported by substantial evidence on the record considered as a whole, shall be conclusive. If application is made to the court by either party for leave to introduce additional evidence which was either offered to the President and not admitted, or which could not reasonably have been offered to the President or included by the President in such proceedings, and the court determines that such evidence should be admitted, the court shall order the evidence to be presented to the President. The President shall promptly receive the same, and such other evidence as he deems necessary or proper, and thereupon he shall certify and file with the court a transcript thereof and any modification made in the regulation or order as a result thereof; except that on request by the President, any such evidence shall be presented directly to the court.

(b) The Emergency Court of Appeals is hereby continued for the purpose of the exercise of the jurisdiction granted by this title, with the powers herein specified, together with the powers heretofore granted by law to such court which are not inconsistent with the provisions of this title. The court shall have the powers of a district court with respect to the jurisdiction conferred on it by this title. So

far as necessary to decision the court shall decide all relevant questions of law, interpret constitutional and statutory provisions, interpret the meaning or applicability of the terms of any official action under this title or under this Act, as amended, of which this title is a part and with respect to this title, or under the Housing and Rent Act of 1947, as amended. The court shall exercise its powers and prescribe rules governing its procedure in such manner as to expedite the determination of cases of which it has jurisdiction under this title.

(c) Within thirty days after entry of a judgment or order, interlocutory or final, by the Emergency Court of Appeals, a petition for a writ of certiorari may be filed in the Supreme Court of the United States, and thereupon the judgment or order shall be subject to review by the Supreme Court in the same manner as a judgment of a United States court of appeals as provided in section 1254 of title 28, United States Code. The Supreme Court shall advance on the docket and expedite the disposition of all causes filed therein pursuant to this subsection. The Emergency Court of Appeals, and the Supreme Court upon review of judgments and orders of the Emergency Court of Appeals, shall have exclusive jurisdiction to determine the validity of any such regulation or order issued under this title, or under the Housing and Rent Act of 1947, as amended. Except as provided in this section, no court, Federal, State, or Territorial, shall have juris-

> diction or power to consider the validity of any such regulation or order, or to stay, restrain, enjoin, or set aside, in whole or in part, any provision of this title, or the Housing and Rent Act of 1947, as amended, authorizing the issuance of such regulations or orders, or any provision of any such regulation or order, or to restrain or enjoin the enforcement of any such provision.

Section 705 of the Defense Production Act of 1950, 64 Stat. 816, as amended, 66 Stat. 306, 50 U.S.C. App. 2155, provides in pertinent part as follows:

> (a) The President shall be entitled, while this Act is in effect and for a period of two years thereafter, by regulation, subpena, or otherwise, to obtain such information from, require such reports and the keeping of such records by, make such inspection of the books, records, and other writings, premises or property of * * * any person as may be necessary or appropriate, in his discretion, to the enforcement or the administration of this Act and the regulations or orders issued thereunder. The President shall issue regulations insuring that the authority of this subsection will be utilized only after the scope and purpose of the investigation, inspection, or inquiry to be made have been defined by competent authority, and it is assured that no adequate and authoritative data are available from any Federal or other responsible agency. In case of contumacy by, or refusal to obey a

subpena served upon, any person referred to in this subsection, the district court of the United States for any district in which such person is found or resides or transacts business, upon application by the President, shall have jurisdiction to issue an order requiring such person to appear and give testimony or to appear and produce documents, or both; and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(b) No person shall be excused from complying with any requirement under this section or from attending and testifying or from producing books, papers, documents, and other evidence in obedience to a subpena before any grand jury or in any court or administrative proceeding based upon or growing out of any alleged violation of this Act on the ground that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to penalty or forfeiture; but no natural person shall be prosecuted or subjected to any penalty or forfeiture in any court, for or on account of any transaction, matter, or thing concerning which he is so compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, documentary or otherwise, except that such natural person so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying: *Provided,* That the immunity granted herein from prosecution and punishment and

from any penalty or forfeiture shall not be construed to vest in any individual any right to priorities assistance, to the allocation of materials, or to any other benefit which is within the power of the President to grant under any provision of this Act.

(c) The production of a person's books, records, or other documentary evidence shall not be required at any place other than the place where such person usually keeps them, if, prior to the return date specified in the regulations, subpena, or other document issued with respect thereto, such person furnishes the President with a true copy of such books, records, or other documentary evidence (certified by such person under oath to be a true and correct copy) or enters into a stipulation with the President as to the information contained in such books, records, or other documentary evidence. Witnesses shall be paid the same fees and mileage that are paid witnesses in the courts of the United States.

Section 706 of the Defense Production Act of 1950, 64 Stat. 817, 50 U.S.C. App., Supp. V, 2156, provides in pertinent part as follows:

(a) Whenever in the judgment of the President any person has engaged or is about to engage in any acts or practices which constitute or will constitute a violation of any provision of this Act, he may make application to the appropriate court for an order enjoining such acts or practices, or for an order enforcing

compliance with such provision, and upon a showing by the President that such person has engaged or is about to engage in any such acts or practices a permanent or temporary injunction, restraining order, or other order, *with or without such injunction or restraining order,*[4] shall be granted without bond.

(b) The district courts of the United States and the United States courts of any Territory or other place subject to the jurisdiction of the United States shall have jurisdiction of violations of this Act or any rule, regulation, order, or subpena thereunder, and of all civil actions under this Act to enforce any liability or duty created by, or to enjoin any violation of, this Act or any rule, regulation, order, or subpena thereunder. Any criminal proceeding on account of any such violation may be brought in any district in which any act, failure to act, or transaction constituting the violation occurred. Any such civil action may be brought in any such district or in the district in which the defendant resides or transacts business. Process in such cases, criminal or civil, may be served in any district wherein the defendant resides or transacts business or wherever the defendant may be found; the subpena for witnesses who are required to attend a court in any district in such case may run into any other district. * * *

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[4] Italicized portion added by 109(e).

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